

3/20/02
Hearing:
October 18, 2001

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 26
CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Apollo Group, Inc.
v.
International Foundation for Retirement Education

Opposition No. 114,515
to Application No. 75/368,999
filed on October 6, 1997

Sid Leach of Snell & Wilmer for Apollo Group, Inc.

David K. Koehler of Nixon Peabody for International
Foundation for Retirement Education.

Before Walters, Bottorff and Rogers, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Apollo Group, Inc. filed its opposition to the
application of International Foundation for Retirement
Education to register the mark CRC for "educational
services, namely, classes, seminars, workshops, and
conferences for counselors and administrators providing
services to retirement plans and their participants in

the field of financial planning," in International Class 41.¹

As grounds for opposition, opposer asserts that applicant's mark will, when used in conjunction with applicant's services, so resemble opposer's previously used and registered mark CRPC for "educational services, namely, providing courses and testing in the fields of retirement and financial planning, retirement plans, retirement investment and life management"² as to be likely to cause confusion, under Section 2(d) of the Trademark Act.³

Applicant, in its answer, denied the salient allegations of the claim and asserted affirmatively both that it has priority of use and that "[o]pposer cannot claim exclusive rights to any combination of letters that incorporates "C" and "R" because numerous registered and unregistered marks for related services incorporate

¹ Application Serial No. 75/368,999, filed October 6, 1997, based upon an allegation of a bona fide intention to use the mark in commerce in connection with the identified services.

² Registration No. 2,251,936, issued June 8, 1999, in International Class 41, with an original application filing date of September 11, 1997.

³ In its briefs, opposer appears to argue claims of genericness and dilution in addition to the pleaded claim of likelihood of confusion. Neither genericness nor dilution were pleaded by opposer or tried by the parties. Therefore, these claims are expressly and summarily rejected and have not been considered.

similar letter combinations that render opposer's mark weak in a crowded field."

The Record

The record consists of the pleadings; the file of the involved application; a certified status and title copy of opposer's Registration No. 2,251,936; various specified responses of opposer to applicant's interrogatories and requests for admissions, and copies of articles excerpted from the LEXIS/NEXIS database, all made of record by applicant's notice of reliance; the testimony deposition by opposer of Jesse B. Arman, opposer's vice president of academic affairs at its College for Financial Planning, with accompanying exhibits; and the testimony depositions, with accompanying exhibits, by applicant of Arthur N. Caple, Jr., applicant's vice chairman of its Board, Mary Sue Wechsler, applicant's managing director, and Lewis Walker, a self-employed Certified Retirement Counselor.

Both parties filed briefs on the case and an oral hearing was held.

As a preliminary matter, we consider opposer's July 16, 2001, motion to strike applicant's brief as untimely filed. Opposer contends that applicant's brief was due on June 14, 2001, and its extension request, filed June 18,

2001, to extend its briefing deadline to June 25, 2001, was filed after the expiration of the previously-established due date for applicant's brief. In its opposition to the motion, applicant contends that its brief was due on June 18, 2001, and, therefore, its extension request filed that day was timely.

The record shows that, on November 28, 2000, applicant filed a timely motion, with consent, to extend its testimony period to January 26, 2001, and to extend opposer's rebuttal testimony period to March 16, 2001. Under Rule 2.128(a)(1), opposer's brief was due sixty days later, on May 15, 2001, and applicant's brief was due thirty days after that, on June 14, 2001. In concluding its brief was due on June 18, 2001, applicant miscalculated the due date. However, on June 28, 2001, the Board approved applicant's motion, filed June 18, 2001, to extend its briefing due date to June 25, 2001. On June 25, 2001, applicant filed a request to extend its briefing due date to June 26, 2001, and filed its brief on June 26, 2001. Opposer did not file its objection until July 16, 2001, and then it objected only to the timeliness of the June 18, 2001, extension request.

Because applicant's motion was filed after the June 14, 2001 due date, the motion is, effectively, one to

reopen applicant's briefing period. However, even if our approval of applicant's motion was premature in that the Board may not have waited long enough to receive a response, the motion is, in any event, conceded because opposer did not file a timely response. See Trademark Rules 2.119 and 2.127. Further, opposer indicated no specific injury suffered by the delay. We believe that no harm is done to opposer by the delay and by consideration of applicant's brief. Applicant's calculation error amounted to only a matter of several days and the Board prefers to decide a case on its merits, including considering both parties' briefs. Therefore, we approve both of applicant's motions (filed June 18 and 25, 2001); we find that applicant's brief is timely filed; and we have considered it in reaching our decision.

The Parties

We derive from the record the following information about the parties and their activities. Opposer is the holding company for the College for Financial Planning ("the College"), which provides educational materials, courses and testing in the financial planning field. The financial planning field encompasses the financial planning process, insurance, investments, retirement

planning, tax planning, and estate planning. The College has 15 full-time faculty and offers a masters degree program, certification programs, continuing education, and professional development, all via electronic and distance learning.

The College, in existence since 1972, originated the program leading to the designation of Certified Financial Planner, or CFP, which title was first awarded in 1973. The CFP program is now administered nationwide by an independent CFP Board. The College is one of 150 entities teaching CFP courses and the CFP Board has administered the CFP certifying exams since 1985. Opposer's witness, Mr. Arman, stated that the College graduates about 1500 students per year from its CFP program; and that 34% of those who sat for the last CFP certifying exam were the College's students.

Opposer's designation of Chartered Retirement Planning Counselor, or CRPC, is used in connection with a program administered by the College that relates directly to the retirement aspect of financial planning, *i.e.*, it is used to designate a retirement planning course that complements the general CFP curriculum. For an individual to use the CRPC designation, an individual must complete the College's CRPC educational program,

pass an exam administered by the College, sign a code of ethics, and comply with regular continuing education requirements established by the College or Board.

The CRPC mark is used by the College to identify its educational program, as well as by program graduates to indicate their qualifications to the public. The market for the College's CRPC program consists of professionals in the financial planning field, *i.e.*, financial planners who are registered representatives of corporate financial planners such as Morgan Stanley or American Express; and to a lesser extent, specialists within corporate or governmental benefits departments, attorneys, and estate planners. Much of the market for the CRPC program consists of individuals who have already completed the CFP program. In the financial planning field, it is not unusual for professionals to obtain qualifications under several different programs and to show several designations, by acronym, after their names. For example, in addition to CRPC, an individual may be a CPA (Certified Public Accountant) and/or a CFP (Certified Financial Planner). Competing programs and designations in the retirement planning field include CFM (a Merrill Lynch program leading to the designation of Certified Financial Manager) and ChFC (an American College program

leading to the designation of Chartered Financial Consultant).

Applicant is a non-profit foundation ("the Foundation") organized specifically to develop and administer an educational program qualifying students to be Certified Retirement Counselors, or CRCs. This program was originally conceived by the National Association of Government Deferred Compensation Administrators (NAGDCA) to fill a perceived need in the financial planning field. NAGDCA is a national association that represents public state, county and city retirement plans, providing education and lobbying. Development began within NAGDCA in 1994; many industry groups, including the National Preretirement Education Association (NPEA) and the National Association of Public Pension Plan Administrators, contributed to the process; a partnership was formed with Texas Tech University; and the Foundation was established.

The CRC course, an electronic and distance learning program, is offered and administered by the Foundation. Exams are offered regionally by the Foundation and are taken by students after the completion of each of four modules comprising the program. Following the successful completion of the entire program, students sign an ethics

code and must complete prescribed continuing education requirements. A successful graduate may use the CRC designation.

The CRC student must have completed college to enroll in the CRC program and, before completing the program, have worked in the field for two years. The program is aimed at professionals in the financial services industry, as well as professionals in government or corporate human resources departments and retirement/pension plan administrators. The market for the CRC program also includes, to a lesser extent, CPA's, attorneys, and insurance company retirement specialists.

Applicant was not aware of opposer's CRPC program at the time it developed and chose the CRC mark for its program. Neither party is aware of any actual confusion between their respective marks.

Applicant presented the testimony of Lewis Walker, a professional in comprehensive financial planning and fee-based asset management. Mr. Walker, who is both a CFP and a CRC, among other qualifications, testified about the financial planning field. Mr. Walker stated that there are many different certifications, all represented by acronyms, for both core programs and various specialties in the financial planning field; and that

there are many three or four letter designations, including similar acronyms for competing programs. Several examples he mentioned are CIMA (Certified Investment Management Analyst); CIMC (Certified Investment Management Consultant); CLU (Chartered Life Underwriter); ChFC (Chartered Financial Consultant); RFP (Registered Financial Planner); CFP (Certified Financial Planner); PFS (Personal Financial Specialist); CFA (Certified Financial Analyst); RFS (Registered Fund Specialist); CMFC (Certified Mutual Fund Counselor); and CDP (Certified Divorce Planner).

Mr. Walker stated that professionals in the field, including those looking to obtain certain qualifications, know the meanings of, at least, the various core designations, for example, CFP, and make their decisions to obtain a certain specialty certification based on many factors. In particular, professionals in the field who are prospective students must look beyond the acronym to the words each represents and determine the value of a certain certification depending on its relationship to their specialty and the quality and reputation of the course. Because of the proliferation of financial planning acronyms, Mr. Walker stated that professionals

in the financial planning field must be aware of small differences among these acronyms.

Analysis

Inasmuch as a certified copy of opposer's registration is of record, there is no issue with respect to opposer's priority.⁴ *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Our determination of likelihood of confusion under Section 2(d) must be based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). *See also In re Azteca*

⁴ Opposer's pleaded and established registration issued on June 8, 1999, and this opposition was filed on June 23, 1999. Because opposer has a valid registration and applicant has not filed a counterclaim to cancel opposer's registration, the issue of priority is not before us in this case. Thus, applicant's affirmative claim in its answer that it has priority of use has not been considered.

Restaurant Enterprises, Inc., 50 USPQ2d 1209 (TTAB 1999)
and the cases cited therein.

With respect to the services of the parties, we observe that there is a substantial overlap in the services identified in the application and in the pleaded registration, such that the services are essentially the same and competitive. Thus, we conclude that the services of the parties are either identical or closely related.

Although both opposer and applicant discuss the end services offered to the public by professionals who have qualified as either a CRC or CRPC, opposer's and applicant's respective identifications of services are limited to their educational services, which the evidence establishes are offered to professionals, or prospective professionals, in the financial planning field. Thus, this is the relevant purchaser that we must consider. Further, the evidence establishes that the decision to pursue one course of study over another is not lightly taken. Rather, many factors and careful consideration are involved in deciding to take a particular course of study in this field.

It appears, from the evidence, that both opposer and applicant market their services in the customary manner

for such services. Thus, the channels of trade and class of purchasers of the parties' services are, essentially, the same.

Turning to the marks, we note that while we must base our determination on a comparison of the marks in their entireties, we are guided, equally, by the well established principle that, in articulating reasons for reaching a conclusion on the issue of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties." *In re National Data Corp.*, 732 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Regarding acronym marks, several cases state that marks that are unpronounceable letter combinations are likely to be inherently difficult to remember and, thus, more susceptible of confusion or mistake than are word marks. See *Weiss Associates, Inc. v. HRL Associates, Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990); and *Alberto-Culver Co. v. F.D.C. Wholesale Corp.*, 16 USPQ2d 1597 (TTAB 1990) and cases cited therein. While this principle applies to the marks herein, we find that there are several mitigating factors that make confusion

unlikely in the case before us. The evidence establishes that the financial planning field is rife with acronyms representing highly suggestive designations signifying the qualifications of those in the field. Almost without exception, all of these acronyms consist of three or four letters and begin with "C." The evidence establishes that the services of the parties are directed to professionals in the financial planning field who are, presumably, accustomed to noting and distinguishing among the multitude of acronyms in the field based on minor differences. Further, these professionals are likely to exercise a great degree of care in choosing a course of study leading to a certain certification.

Thus, while the marks in this case differ by only one letter and the services are essentially the same, we find that, for the reasons stated, confusion as to source is unlikely and has not been established by opposer.

Decision: The opposition is dismissed.